

**UNITED STATES COURT OF APPEALS**  
**TENTH CIRCUIT**

**March 21, 2006**

**Elisabeth A. Shumaker**  
**Clerk of Court**

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SHAWN R. CHAPMAN,  
Petitioner-Appellant,

v.

RON WARD  
Respondent-Appellee.

No. 05-6321  
(D.C. No. CIV-04-719-C)  
(W. D. Okla.)

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**ORDER**

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Before **KELLY, McKAY, and LUCERO**, Circuit Judges.

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Petitioner, a state prisoner appearing pro se, seeks habeas relief pursuant to 28 U.S.C. § 2254. The magistrate judge dismissed his petition as time-barred by the statute of limitations. Report and Recommendation, 5 (W.D. Okla. Aug. 24, 2004). Petitioner did not appeal the magistrate judge's Report and Recommendation even though he was advised that the deadline for filing objections was September 12, 2004. In a September 22, 2004, Order, Petitioner was granted an extension of time until October 13, 2004, to file his objections. No objections were filed. On October 28, 2004, the district court entered a separate judgment and order adopting the magistrate judge's Report and Recommendation and dismissing the petition as untimely. Petitioner filed a

timely appeal in the district court on November 9, 2004.

By failing to file an objection to the magistrate judge's Report and Recommendation, Petitioner has waived his right to appellate review of both factual and legal determinations, unless we elect to review the merits of the appeal based on the "interests of justice" exception. *See Key Energy Resources Inc. v. Merrill*, 230 F.3d 1197, 1199-1200 (10th Cir. 2000); *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991). We do not so elect.

The issues Petitioner raises on appeal are identical to those brought before the district court. To grant a certificate of appealability, Petitioner must make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (1994). To meet this burden, Petitioner must demonstrate "that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quotation omitted).

We have carefully reviewed Petitioner's brief, the district court's disposition, the magistrate judge's recommendation, and the record on appeal. Nothing in the facts, the record on appeal, or Petitioner's filing raises an issue which meets our standard for the grant of a certificate of appealability. For substantially the same reasons set forth by the magistrate judge and adopted by

the district court in its order of October 28, 2004, we cannot say “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner.” *Id.*

We **DENY** Petitioner’s request for a certificate of appealability and his motion to proceed *in forma pauperis*, and we **DISMISS** the appeal.

Entered for the Court

Monroe G. McKay  
Circuit Judge